

Bank

contoured inwardly towards the face of the user and adapted to extend about the cheeks and between the nose and upper lip of the user, and a handle portion extending laterally from said frame portion, said handle portion being sized to be grasped in the hand of the user at a point spaced apart from the lips of the user when the membrane is interposed between the kissing parties, positioning the membrane proximately to the lips or cheek [check] of the intended recipient of the affection, and kissing said intended recipient.

REMARKS

Claims 1-22 are pending in this application of which claims 1-22 have been rejected.

1. Claims 1-4, 6, 8, 14-16, and 22 stand rejected under 35 U.S.C. §102(b) as anticipated by Laguerre, British Patent 1,061,321. The Examiner states that Laguerre discloses the device as claimed.

Claim 2 has been cancelled, therefore Applicant submits that the rejection of claim 2 is now rendered moot.

This Amendment incorporates some of the changes to the claims set forth in Applicant's Amendment of April 14, 1994 in response to the Office Action of October 27, 1993. The Amendment was not entered by the Examiner when it was submitted.

Applicant respectfully submits that claims 1, 3-4, 6, 8, 14-16, and 22 are not anticipated by Laguerre as Laguerre does not disclose every limitation recited in the claims.

For a §102(b) rejection to stand, all of the elements of the claimed invention must be present in a single reference either expressly or inherently. Radio Steel & Mfg. Co. v. MTD Products, Inc., 731 F.2d 840, 221 U.S.P.Q. 657 (Fed. Cir. 1984), cert. denied, 469 U.S. 831 (1984).

a. Independent claim 1, as amended, includes the limitation of a "thin, flexible, impervious membrane consisting of two plys of thin, flexible, impervious material closed on three sides and open on a fourth side and mounted upon a supporting frame device, . . . consisting of a formable frame portion sized to pass through" the fourth side of the membrane and to substantially mate with the interior ends of the three sides of the membrane, the frame portion contoured inwardly toward the face of the user and adapted to extend about the cheeks and between the nose and upper lip of the user.

In contrast, these limitation are not met by Laguerre. Laguerre discloses a garden marker that includes a rigid frame of a substantially "Y" shape over which may be placed a non-rigid bag. The Laguerre frame portion is not formable nor contoured as recited in claim 1. In fact, the Laguerre device is characterized as rigid. Certainly, Laguerre is not adapted to be utilized as a face shield with the limitations recited in claim 1.

In addition, the rigid horizontal plate (item 2 or 2A) would certainly interfere with the use of Laguerre in the matter taught by the present invention and thus would not suggest its use.

In view of the above, Applicant respectfully submits that the limitations recited in Claim 1 are not present in Laguerre and, therefore, Laguerre can not anticipate claim 1. Applicant, therefore, submits that the rejection under § 102(b) is in error and should be withdrawn.

Applicant also submits that claims 3-4, 6, and 8 are not anticipated by Laguerre because the claims depend from independent claim 1 which has been shown above to not be anticipated (§ 102(b)) by Laguerre.

b. Independent claim 14, as amended, includes the limitation of "a continuous formable supporting frame with an elongated handle, projecting laterally from said frame and a pliable envelope, consisting of two plys of a pliable membrane joined so as to form said envelope, said envelope being open on one edge wherein said frame is sized to substantially mate with the interior edges of said envelope and to support said envelope in a spaced relation to said handle."

Again, these limitations are not met by Laguerre. Laguerre does not disclose a continuous formable supporting frame such that the frame substantially mates with the interior edges of the envelope. Laguerre's frame is not continuous nor is it formable and therefore it can not substantially mate with the interior edges of the envelope.

In view of the above, Applicant respectfully submits that the limitations recited in Claim 14 are not present in Laguerre and, therefore, Laguerre can not anticipate claim 14 under § 102(b).

Applicant also submits that claims 15 and 16 are not anticipated by Laguerre because the claims depend from independent claim 1 which has been shown above to not be anticipated by Laguerre.

c. Independent claim 20, as amended, is a method of preventing transmission of germs and the like during kissing. The method consists of interposing a thin, flexible, impervious membrane, consisting of two plies of thin, flexible, impervious material fastened together on three sides and open on a fourth side, in front of the lips of the kissing person, said membrane being removable mounted upon a supporting device, said supporting device consisting of a formable frame portion sized to substantially mate with said membrane, said frame portion contoured inwardly towards the face of the user and adapted to extend about the cheeks and between the nose and upper lip of the user.

Again, these limitations are not met by Laguerre. Nowhere does Laguerre teach a method as recited in claim 20 in addition to not meeting the limitations previously discussed with respect to claims 1 and 14.

In view of the above, Applicant respectfully submits that the limitations recited in Claim 20 are not present in Laguerre and, therefore, Laguerre can not anticipate claim 20.

2. Furthermore, Applicant respectfully submits that claims 1, 3-4, 6, 8, 14-16, and 22 are not obvious over Laguerre in view of any cited reference.

There is no teaching or suggestion in Laguerre or any other reference to provide a kissing shield that utilizes a continuous frame over which a bag is place, with the frame contoured to fit ones face.

Therefore, absent a suggestion or teaching in the prior art for the claimed limitations, there can be no obviousness.

3. Claims 7, 9, 11-13, 17, and 19 stand rejected under 35 U.S.C. §103 as obvious over Laguerre in view of Barker, GB patent 2,039,406.

Something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 5 U.S.P.Q.2d 134 (Fed. Cir. 1988).

a. Applicant respectfully submits that claims 7, 9, and 11-13 are not obvious over Laguerre in view of Barker. Claims 7, 9, and 11-13 depend from claim 1. As the basis for the obviousness rejection the Examiner utilizes Laguerre and states that Laguerre discloses everything in applicant's invention with the exception of the design, the material, and the frame being made of wire.

Applicant submits that Laguerre does not teach or suggest a continuous frame over which a bag is placed, the frame substantially continuously engaging the seams of the bag as recited in the base independent claim 1. The present claims of Laguerre tautly stretches the bag over the frame. Also, there is no suggestion in either reference to have a formable contoured frame portion as recited.

Thus, in view of the above Applicant submits that claims 7, 9, and 11-13 are not rendered obvious over Laguerre in view of Barker.

b. Applicant respectfully submits that claims 17 and 19 are not obvious over Laguerre in view of Barker. Claims 17 and 19 depend from claim 14.

For the same reasons set forth above, applicant submits that claims 17 and 19 are not obvious over Laguerre in view of Barker.

4. Claims 5, 10, 18, 20, and 21 stand rejected under 35 U.S.C. §103 as obvious over Rubin in view of McCosker and Favory.

Because claims 5, 10, 18, 20, and 21 are dependent upon non-obvious independent base claims, Applicant submits that these claims are likewise not obvious.

Furthermore, Rubin is not a 2-ply device such that a frame could fit thereover. Thus, there is absolutely no teaching in Rubin that would suggest to one skilled in the art to utilize such for the present invention.

In complete contrast to the presently cited limitations, Rubin teaches a single piece latex membrane worn over the mouth and hooked to the user's ears. McCosker and Favory teach hand held protection devices but not the limitations found in the present claims.

Applicant submits that the claims as amended do define over the prior art of record, and are not obvious thereover.

In view of the foregoing, Applicant respectfully requests a withdrawal of all rejection and objections to the claims. An early allowance of all remaining claims 1, and 3-22 is hereby solicited.

Respectfully submitted,

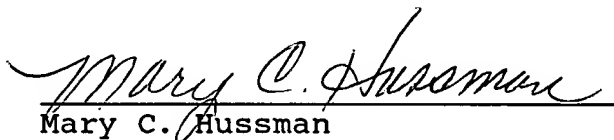


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CERTIFICATION UNDER 37 C.F.R. §1.10

I hereby certify that this Amendment and the documents referred to are enclosed herein and are being deposited with the United States Postal Service on September 15, 1994, in an envelope marked as "Express Mail Post Office to Addressee" Mailing Label Number TB459040681 US addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.


Mary C. Hussman